



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB1474

Introduced 2/23/2005, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

5 ILCS 100/1-5	from Ch. 127, par. 1001-5
5 ILCS 100/1-13 new	
5 ILCS 100/1-15	from Ch. 127, par. 1001-15
5 ILCS 100/1-30	from Ch. 127, par. 1001-30
5 ILCS 100/10-5	from Ch. 127, par. 1010-5
5 ILCS 100/10-15	from Ch. 127, par. 1010-15
5 ILCS 100/10-20	from Ch. 127, par. 1010-20
5 ILCS 100/10-25	from Ch. 127, par. 1010-25
5 ILCS 100/10-45	from Ch. 127, par. 1010-45
5 ILCS 100/10-50	from Ch. 127, par. 1010-50
5 ILCS 100/10-60	from Ch. 127, par. 1010-60
5 ILCS 100/10-65	from Ch. 127, par. 1010-65
5 ILCS 100/Art. 12 heading new	
5 ILCS 100/12-5 new	
5 ILCS 100/12-10 new	
5 ILCS 100/12-15 new	
5 ILCS 100/12-20 new	
5 ILCS 100/12-25 new	
5 ILCS 100/12-30 new	
5 ILCS 100/12-35 new	
5 ILCS 100/12-40 new	
20 ILCS 415/4c	from Ch. 127, par. 63b104c

Amends the Illinois Administrative Procedure Act to create the Office of Administrative Hearings. Provides that the Office shall conduct administrative hearings for agencies under the jurisdiction of the Governor, except for the Illinois Public Labor Relations Board, the Illinois Educational Labor Relations Board, the Illinois Commerce Commission, the Illinois Workers' Compensation Commission, the Civil Service Commission, the Pollution Control Board, the Illinois State Police Merit Board, the Property Tax Appeal Board, and the Human Rights Commission. Provides for the appointment of a Chief Administrative Law Judge by the Governor with the advice and consent of the Senate. Sets the powers and duties of the Chief Administrative Law Judge. Sets qualifications for administrative law judges employed by the Office. Sets out procedures for the conduct of administrative hearings by the Office. Provides for the transfer of personnel and property to the Office from State agencies. Amends the Personnel Code to exempt employees of the Office from the provisions of the Code. Effective immediately.

LRB094 09028 JAM 39249 b

1 AN ACT concerning administrative hearings.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is  
5 amended by changing Sections 1-5, 1-15, 1-30, 10-5, 10-15,  
6 10-20, 10-25, 10-45, 10-50, 10-60, and 10-65 and adding Section  
7 1-13 and Article 12 as follows:

8 (5 ILCS 100/1-5) (from Ch. 127, par. 1001-5)

9 Sec. 1-5. Applicability.

10 (a) This Act applies to every agency as defined in this  
11 Act. Beginning January 1, 1978, in case of conflict between the  
12 provisions of this Act and the Act creating or conferring power  
13 on an agency, this Act shall control. ~~If, however, an agency~~  
14 ~~(or its predecessor in the case of an agency that has been~~  
15 ~~consolidated or reorganized) has existing procedures on July 1,~~  
16 ~~1977, specifically for contested cases or licensing, those~~  
17 ~~existing provisions control, except that this exception~~  
18 ~~respecting contested cases and licensing does not apply if the~~  
19 ~~Act creating or conferring power on the agency adopts by~~  
20 ~~express reference the provisions of this Act.~~ Where the Act  
21 creating or conferring power on an agency establishes  
22 administrative procedures not covered by this Act, those  
23 procedures shall remain in effect.

24 (b) The provisions of this Act do not apply to (i)  
25 preliminary hearings, investigations, or practices where no  
26 final determinations affecting State funding are made by the  
27 State Board of Education, (ii) legal opinions issued under  
28 Section 2-3.7 of the School Code, (iii) as to State colleges  
29 and universities, their disciplinary and grievance  
30 proceedings, academic irregularity and capricious grading  
31 proceedings, and admission standards and procedures, and (iv)  
32 the class specifications for positions and individual position

1 descriptions prepared and maintained under the Personnel Code.  
2 Those class specifications shall, however, be made reasonably  
3 available to the public for inspection and copying. The  
4 provisions of this Act do not apply to hearings under Section  
5 20 of the Uniform Disposition of Unclaimed Property Act.

6 (c) Section 5-35 of this Act relating to procedures for  
7 rulemaking does not apply to the following:

8 (1) Rules adopted by the Pollution Control Board that,  
9 in accordance with Section 7.2 of the Environmental  
10 Protection Act, are identical in substance to federal  
11 regulations or amendments to those regulations  
12 implementing the following: Sections 3001, 3002, 3003,  
13 3004, 3005, and 9003 of the Solid Waste Disposal Act;  
14 Section 105 of the Comprehensive Environmental Response,  
15 Compensation, and Liability Act of 1980; Sections 307(b),  
16 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal  
17 Water Pollution Control Act; and Sections 1412(b),  
18 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking  
19 Water Act.

20 (2) Rules adopted by the Pollution Control Board that  
21 establish or amend standards for the emission of  
22 hydrocarbons and carbon monoxide from gasoline powered  
23 motor vehicles subject to inspection under Section 13A-105  
24 of the Vehicle Emissions Inspection Law and rules adopted  
25 under Section 13B-20 of the Vehicle Emissions Inspection  
26 Law of 1995.

27 (3) Procedural rules adopted by the Pollution Control  
28 Board governing requests for exceptions under Section 14.2  
29 of the Environmental Protection Act.

30 (4) The Pollution Control Board's grant, pursuant to an  
31 adjudicatory determination, of an adjusted standard for  
32 persons who can justify an adjustment consistent with  
33 subsection (a) of Section 27 of the Environmental  
34 Protection Act.

35 (5) Rules adopted by the Pollution Control Board that  
36 are identical in substance to the regulations adopted by

1 the Office of the State Fire Marshal under clause (ii) of  
2 paragraph (b) of subsection (3) of Section 2 of the  
3 Gasoline Storage Act.

4 (d) Pay rates established under Section 8a of the Personnel  
5 Code shall be amended or repealed pursuant to the process set  
6 forth in Section 5-50 within 30 days after it becomes necessary  
7 to do so due to a conflict between the rates and the terms of a  
8 collective bargaining agreement covering the compensation of  
9 an employee subject to that Code.

10 (e) Section 10-45 of this Act shall not apply to any  
11 hearing, proceeding, or investigation conducted under Section  
12 13-515 of the Public Utilities Act.

13 (f) Article 10 of this Act does not apply to any hearing,  
14 proceeding, or investigation conducted by the State Council for  
15 the State of Illinois created under Section 3-3-11.05 of the  
16 Unified Code of Corrections or by the Interstate Commission  
17 ~~Commission~~ for Adult Offender Supervision created under the  
18 Interstate Compact for Adult Offender Supervision.

19 (Source: P.A. 92-571, eff. 6-26-02; revised 7-25-02.)

20 (5 ILCS 100/1-13 new)

21 Sec. 1-13. "Administrative hearing" means any hearing  
22 required to comply with the provisions of this Act concerning a  
23 contested case.

24 (5 ILCS 100/1-15) (from Ch. 127, par. 1001-15)

25 Sec. 1-15. "Administrative law judge" means the presiding  
26 officer or officers at the initial administrative hearing  
27 before each agency and each continuation of that administrative  
28 hearing. The term also includes but is not limited to hearing  
29 examiners, hearing officers, referees, and arbitrators.

30 (Source: P.A. 87-823.)

31 (5 ILCS 100/1-30) (from Ch. 127, par. 1001-30)

32 Sec. 1-30. "Contested case" means an adjudicatory  
33 proceeding (not including ratemaking, rulemaking, or

1 quasi-legislative, informational, or similar proceedings) in  
2 which the individual legal rights, duties, or privileges of a  
3 party are required by law to be determined by an agency only  
4 after an opportunity for an administrative ~~a~~ hearing.

5 (Source: P.A. 87-823.)

6 (5 ILCS 100/10-5) (from Ch. 127, par. 1010-5)

7 Sec. 10-5. Rules required for hearings. All agencies shall  
8 adopt rules establishing procedures for administrative  
9 ~~contested case~~ hearings.

10 (Source: P.A. 87-823.)

11 (5 ILCS 100/10-15) (from Ch. 127, par. 1010-15)

12 Sec. 10-15. Standard of proof. Unless otherwise provided  
13 by law or stated in the agency's rules, the standard of proof  
14 in any administrative ~~contested case~~ hearing conducted under  
15 this Act by an agency shall be the preponderance of the  
16 evidence.

17 (Source: P.A. 87-823.)

18 (5 ILCS 100/10-20) (from Ch. 127, par. 1010-20)

19 Sec. 10-20. Qualifications of administrative law judges.  
20 ~~All~~ Agencies shall adopt rules concerning the minimum  
21 qualifications of administrative law judges for administrative  
22 ~~contested case~~ hearings not subject to Article 12 of this Act.  
23 The agency head or an attorney licensed to practice law in  
24 Illinois may act as an administrative law judge or panel for an  
25 agency without adopting any rules under this Section. ~~The~~ These  
26 rules may be adopted using the procedures in either Section  
27 5-15 or 5-35.

28 (Source: P.A. 87-823.)

29 (5 ILCS 100/10-25) (from Ch. 127, par. 1010-25)

30 Sec. 10-25. Notice of contested cases; administrative  
31 ~~notice~~, hearing.

32 (a) In a contested case, all parties shall be afforded an

1 opportunity for an administrative ~~a~~ hearing after reasonable  
2 notice. The notice shall be served personally or by certified  
3 or registered mail or as otherwise provided by law upon the  
4 parties or their agents appointed to receive service of process  
5 and shall include the following:

6 (1) A statement of the time, place, and nature of the  
7 administrative hearing.

8 (2) A statement of the legal authority and jurisdiction  
9 under which the administrative hearing is to be held.

10 (3) A reference to the particular Sections of the  
11 substantive and procedural statutes and rules involved.

12 (4) Except where a more detailed statement is otherwise  
13 provided for by law, a short and plain statement of the  
14 matters asserted, the consequences of a failure to respond,  
15 and the official file or other reference number.

16 (5) The names and mailing addresses of the  
17 administrative law judge, all parties, and all other  
18 persons to whom the agency gives notice of the  
19 administrative hearing unless otherwise confidential by  
20 law.

21 (b) An opportunity shall be afforded all parties to be  
22 represented by legal counsel and to respond and present  
23 evidence and argument.

24 (c) Unless precluded by law, disposition may be made of any  
25 contested case by stipulation, agreed settlement, consent  
26 order, or default.

27 (Source: P.A. 87-823.)

28 (5 ILCS 100/10-45) (from Ch. 127, par. 1010-45)

29 Sec. 10-45. Proposal for decision. Except where otherwise  
30 expressly provided by law, when in a contested case a majority  
31 of the officials of the agency who are to render the final  
32 decision has not heard the case or read the record, the  
33 decision, if adverse to a party to the proceeding other than  
34 the agency, shall not be made until a proposal for decision is  
35 served upon the parties and an opportunity is afforded to each

1 party adversely affected to file exceptions and to present a  
2 brief and, if the agency so permits, oral argument to the  
3 agency officials who are to render the decision. The proposal  
4 for decision shall contain a statement of the reasons therefor  
5 and of each issue of fact or law necessary to the proposed  
6 decision and shall be prepared by the persons who conducted the  
7 administrative hearing or one who has read the record.

8 (Source: P.A. 87-823.)

9 (5 ILCS 100/10-50) (from Ch. 127, par. 1010-50)

10 Sec. 10-50. Decisions and orders.

11 (a) A final decision or order adverse to a party (other  
12 than the agency) in a contested case shall be in writing or  
13 stated on ~~in~~ the record. A final decision shall include  
14 findings of fact and conclusions of law, separately stated.  
15 Findings of fact, if set forth in statutory language, shall be  
16 accompanied by a concise and explicit statement of the  
17 underlying facts supporting the findings. If, in accordance  
18 with agency rules, a party submitted proposed findings of fact,  
19 the decision shall include a ruling upon each proposed finding.  
20 Parties or their agents appointed to receive service of process  
21 shall be notified either personally or by registered or  
22 certified mail of any decision or order. Upon request a copy of  
23 the decision or order shall be delivered or mailed forthwith to  
24 each party and to each ~~his~~ attorney of record.

25 (b) All agency orders shall specify whether they are final  
26 and subject to the Administrative Review Law.

27 (c) A decision by any agency in a contested case under this  
28 Act shall be void unless the proceedings are conducted in  
29 compliance with the provisions of this Act relating to  
30 contested cases, except to the extent those provisions are  
31 waived under Section 10-70 ~~and except to the extent the agency~~  
32 ~~has adopted its own rules for contested cases as authorized in~~  
33 ~~Section 1-5.~~

34 (Source: P.A. 92-16, eff. 6-28-01.)

1 (5 ILCS 100/10-60) (from Ch. 127, par. 1010-60)

2 Sec. 10-60. Ex parte communications.

3 (a) Except in the disposition of matters that agencies are  
4 authorized by law to entertain or dispose of on an ex parte  
5 basis, agency heads, agency employees, and administrative law  
6 judges shall not, after notice of hearing in a contested case  
7 or licensing to which the procedures of a contested case apply  
8 under this Act, communicate, directly or indirectly, in  
9 connection with any issue of fact, with any person or party, or  
10 in connection with any other issue with any party or the  
11 representative of any party, without ~~except upon~~ notice and  
12 opportunity for all parties to participate.

13 (b) However, an agency member may communicate with other  
14 members of the agency, and an agency member or administrative  
15 law judge may have the aid and advice of one or more personal  
16 assistants.

17 (c) An ex parte communication received by any agency head,  
18 agency employee, or administrative law judge shall be made a  
19 part of the record of the pending matter, including all written  
20 communications, all written responses to the communications,  
21 and a memorandum stating the substance of all oral  
22 communications and all responses made and the identity of each  
23 person from whom the ex parte communication was received.

24 (d) Communications regarding matters of procedure and  
25 practice, such as the format of pleadings, number of copies  
26 required, manner of service, scheduling, and status of  
27 proceedings, are not considered ex parte communications under  
28 this Section.

29 (Source: P.A. 87-823.)

30 (5 ILCS 100/10-65) (from Ch. 127, par. 1010-65)

31 Sec. 10-65. Licenses.

32 (a) When any licensing is required by law to be preceded by  
33 notice and an opportunity for an administrative ~~a~~ hearing, the  
34 provisions of this Act concerning contested cases shall apply.

35 (b) When a licensee has made timely and sufficient

1 application for the renewal of a license or a new license with  
2 reference to any activity of a continuing nature, the existing  
3 license shall continue in full force and effect until the final  
4 agency decision on the application has been made unless a later  
5 date is fixed by order of a reviewing court.

6 (c) An application for the renewal of a license or a new  
7 license shall include the applicant's social security number.  
8 Each agency shall require the licensee to certify on the  
9 application form, under penalty of perjury, that he or she is  
10 not more than 30 days delinquent in complying with a child  
11 support order. Every application shall state that failure to so  
12 certify shall result in disciplinary action, and that making a  
13 false statement may subject the licensee to contempt of court.  
14 The agency shall notify each applicant or licensee who  
15 acknowledges a delinquency or who, contrary to his or her  
16 certification, is found to be delinquent or who after receiving  
17 notice, fails to comply with a subpoena or warrant relating to  
18 a paternity or a child support proceeding, that the agency  
19 intends to take disciplinary action. Accordingly, the agency  
20 shall provide written notice of the facts or conduct upon which  
21 the agency will rely to support its proposed action and the  
22 applicant or licensee shall be given an opportunity for an  
23 administrative a hearing in accordance with the provisions of  
24 the Act concerning contested cases. Any delinquency in  
25 complying with a child support order can be remedied by  
26 arranging for payment of past due and current support. Any  
27 failure to comply with a subpoena or warrant relating to a  
28 paternity or child support proceeding can be remedied by  
29 complying with the subpoena or warrant. Upon a final finding of  
30 delinquency or failure to comply with a subpoena or warrant,  
31 the agency shall suspend, revoke, or refuse to issue or renew  
32 the license. In cases in which the Department of Public Aid has  
33 previously determined that an applicant or a licensee is more  
34 than 30 days delinquent in the payment of child support and has  
35 subsequently certified the delinquency to the licensing  
36 agency, and in cases in which a court has previously determined

1 that an applicant or licensee has been in violation of the  
2 Non-Support Punishment Act for more than 60 days, the licensing  
3 agency shall refuse to issue or renew or shall revoke or  
4 suspend that person's license based solely upon the  
5 certification of delinquency made by the Department of Public  
6 Aid or the certification of violation made by the court.  
7 Further process, hearings, or redetermination of the  
8 delinquency or violation by the licensing agency shall not be  
9 required. The licensing agency may issue or renew a license if  
10 the licensee has arranged for payment of past and current child  
11 support obligations in a manner satisfactory to the Department  
12 of Public Aid or the court. The licensing agency may impose  
13 conditions, restrictions, or disciplinary action upon that  
14 license.

15 (d) Except as provided in subsection (c), no agency shall  
16 revoke, suspend, annul, withdraw, amend materially, or refuse  
17 to renew any valid license without first giving written notice  
18 to the licensee of the facts or conduct upon which the agency  
19 will rely to support its proposed action and an opportunity for  
20 an administrative hearing in accordance with the provisions  
21 of this Act concerning contested cases. At the administrative  
22 hearing, the licensee shall have the right to show compliance  
23 with all lawful requirements for the retention, continuation,  
24 or renewal of the license. If, however, the agency finds that  
25 the public interest, safety, or welfare imperatively requires  
26 emergency action, and if the agency incorporates a finding to  
27 that effect in its order, summary suspension of a license may  
28 be ordered pending proceedings for revocation or other action.  
29 Those proceedings shall be promptly instituted and determined.

30 (e) Any application for renewal of a license that contains  
31 required and relevant information, data, material, or  
32 circumstances that were not contained in an application for the  
33 existing license shall be subject to the provisions of  
34 subsection (a).

35 (Source: P.A. 90-18, eff. 7-1-99; 91-613, eff. 10-1-99.)

1 (5 ILCS 100/Art. 12 heading new)

2 ARTICLE 12. OFFICE OF ADMINISTRATIVE HEARINGS

3 (5 ILCS 100/12-5 new)

4 Sec. 12-5. Applicability. This Article applies to all  
5 agencies under the jurisdiction of the Governor other than the  
6 following:

7 (a) Illinois Labor Relations Board and the State Panel and  
8 Local Panel created under the Illinois Public Labor Relations  
9 Act;

10 (b) Illinois Educational Labor Relations Board;

11 (c) Illinois Commerce Commission;

12 (d) Illinois Workers' Compensation Commission;

13 (e) Civil Service Commission;

14 (f) Pollution Control Board;

15 (g) Illinois State Police Merit Board;

16 (h) Property Tax Appeal Board; and

17 (i) Human Rights Commission.

18 (5 ILCS 100/12-10 new)

19 Sec. 12-10. Office of Administrative Hearings.

20 (a) The Office of Administrative Hearings (Office) is  
21 established. The Office is an independent State agency in the  
22 executive branch and is responsible for conducting  
23 administrative hearings in accordance with the legislative  
24 intent expressed by this Act.

25 (b) The Office is under the direction of a Chief  
26 Administrative Law Judge, appointed by the Governor, by and  
27 with the advice and consent of the Senate. The Chief  
28 Administrative Law Judge, as a condition of appointment, must  
29 have been admitted to practice law in the State of Illinois for  
30 at least 10 years, must have substantial knowledge and  
31 experience suitable to the duties of the Office, and may be  
32 removed only for good cause following notice and an opportunity  
33 for an adjudicative hearing.

34 (c) The Chief Administrative Law Judge must maintain his or

1 her principal office in Springfield and may maintain any other  
2 offices that may be necessary. The Chief Administrative Law  
3 Judge may purchase or lease any equipment and supplies that may  
4 be necessary to carry out his or her duties and must maintain  
5 records and files of the work of the Office.

6 (5 ILCS 100/12-15 new)

7 Sec. 12-15. Term of office and salary.

8 (a) The Chief Administrative Law Judge shall serve for a  
9 term of 6 years, provided that he or she shall hold office  
10 until a successor is appointed.

11 (b) The Chief Administrative Law Judge shall receive an  
12 annual salary of \$95,000 or the amount established by the  
13 Compensation Review Board, whichever is greater.

14 (5 ILCS 100/12-20 new)

15 Sec. 12-20. Oath. Each prospective Chief Administrative  
16 Law Judge, before taking office, must take and subscribe to the  
17 oath or affirmation prescribed by Section 3 of Article XIII of  
18 the Illinois Constitution, an executed copy of which must be  
19 filed with the Secretary of State.

20 (5 ILCS 100/12-25 new)

21 Sec. 12-25. Powers and Duties of the Chief Administrative  
22 Law Judge. The Chief Administrative Law Judge has the following  
23 powers and duties:

24 (a) The Chief Administrative Law Judge may select any  
25 administrative law judges that are necessary to carry out the  
26 purposes of this Article. The Chief Administrative Law Judge  
27 may establish different levels of administrative law judge  
28 positions. The Chief Administrative Law Judge may employ and  
29 direct other staff, including administrative, technical,  
30 clerical, and other specialized or technical personnel that may  
31 be necessary to carry out the purposes of this Article.

32 (1) Except as otherwise provided in paragraph (2) of  
33 this subsection, each administrative law judge must have

1 been admitted to practice as an attorney in this State for  
2 at least 5 years and must have a demonstrated knowledge of  
3 and experience in administrative law and procedure that is  
4 suitable to the duties of the Office. An administrative law  
5 judge must be a full-time or part-time employee of the  
6 Office, except that the Chief Administrative Law Judge may  
7 contract for the services of an attorney to serve as an  
8 administrative law judge for a specific case, when  
9 necessary, because of a lack of available employees with  
10 the expertise required to handle a specialized contested  
11 case.

12 (2) The Chief Administrative Law Judge may employ  
13 persons who are not admitted to practice as an attorney to  
14 act as administrative law judges if they are transferred to  
15 the Office under subsection (c) of Section 12-40 of this  
16 Article. The Chief Administrative Law Judge may also employ  
17 or contract with persons not admitted to practice law if  
18 those persons have the requisite knowledge of  
19 administrative law and procedure and the specialized  
20 subject-matter expertise to act as administrative law  
21 judges in highly technical cases.

22 (b) Employees of the Office are not subject to the  
23 Personnel Code. The Chief Administrative Law Judge must  
24 establish hiring procedures based upon merit and fitness and  
25 may discipline and terminate employees based only upon good  
26 cause. The Chief Administrative Law Judge must fix salaries of  
27 Office employees and adopt personnel rules establishing a  
28 general salary schedule according to a classification of  
29 employees, subject to merit increases, that applies to all  
30 employees. The Chief Administrative Law Judge must adopt a code  
31 of conduct and rules concerning the hiring, discipline, and  
32 termination of employees.

33 (c) The Chief Administrative Law Judge must assign an  
34 administrative law judge for any proceeding that is required by  
35 this Article to be conducted by the Office and for any  
36 proceeding for which the Office has agreed to furnish an

1 administrative law judge as provided in subsection (d). Any  
2 administrative law judge so assigned does not become an  
3 employee of the agency during the assignment and is not subject  
4 to the direction or the supervision of the agency to whose  
5 proceeding the administrative law judge has been assigned.

6 (d) The Office may enter into an interagency agreement with  
7 any agency to furnish administrative law judges to conduct  
8 administrative hearings not otherwise required to be conducted  
9 by the Office. The Office may also enter into an agreement with  
10 a unit of local government or school district to furnish  
11 administrative law judges to conduct administrative hearings.

12 (e) In assigning administrative law judges, the Chief  
13 Administrative Law Judge must, when possible, use personnel  
14 having experience in the field or subject matter of the hearing  
15 and assign administrative law judges primarily to the hearings  
16 of particular agencies on a long-term basis. The Chief  
17 Administrative Law Judge may act as an administrative law judge  
18 in a particular case.

19 (f) The Office may adopt rules as necessary to carry out  
20 its powers and duties under this Act. The rules must include,  
21 but are not limited to, the procedures for requesting the  
22 assignment of administrative law judges. No agency, however,  
23 may select any individual administrative law judge for any  
24 proceeding or reject any individual administrative law judge,  
25 except in accordance with the provisions of this Article  
26 regarding disqualifications.

27 (g) The Office must develop and institute a program of  
28 continuing education and training for administrative law  
29 judges and may permit administrative law judges and hearing  
30 examiners employed by other agencies to participate in its  
31 program. The Office may develop and institute other educational  
32 programs in the area of administrative law and procedure for  
33 the benefit of State employees and those who participate in  
34 administrative hearings.

35 (h) The Office must:

36 (1) annually collect information on administrative law

1 and procedure in Illinois and must study administrative law  
2 and procedure for the purpose of improving the fairness,  
3 efficiency, and uniformity of administrative adjudicatory  
4 proceedings in Illinois;

5 (2) monitor the quality and cost of State  
6 administrative hearings; and

7 (3) annually report its findings and recommendations  
8 to the Governor and to the General Assembly no later than  
9 March 15 of each year.

10 (5 ILCS 100/12-30 new)

11 Sec. 12-30. Proceedings. Beginning on January 1, 2007, an  
12 administrative law judge of the Office shall preside over any  
13 administrative hearing of any agency subject to this Article,  
14 except that an administrative hearing in a contested case  
15 commenced before January 1, 2007 and pending before an  
16 administrative law judge not transferred to the Office of  
17 Administrative Hearings by operation of Section 12-40 of this  
18 Article shall not be heard by an administrative law judge of  
19 the Office without the agreement of the parties.

20 (5 ILCS 100/12-35 new)

21 Sec. 12-35. Administrative Hearing Procedures.

22 (a) Time and place of hearing. The Office must consult the  
23 agency and determine the place and the time of commencement of  
24 the administrative hearing.

25 (b) Powers of administrative law judge. The administrative  
26 law judge presides at the administrative hearing and may:

27 (1) administer oaths and affirmations;

28 (2) rule on offers of proof and receive relevant  
29 evidence;

30 (3) regulate the schedule and the course of the  
31 hearing;

32 (4) dispose of procedural requests or similar matters;

33 (5) sign and issue subpoenas in the name of the agency  
34 requiring attendance and giving of testimony by witnesses

1 and the production of books, papers, and other documentary  
2 evidence;

3 (6) exercise any other powers relating to the conduct  
4 of the administrative hearing that are lawfully delegated  
5 to him or her by the agency or by the examining, advisory,  
6 or disciplinary board. Whenever, after an agency head or an  
7 examining, advisory, or disciplinary board has commenced  
8 hearing a case with an administrative law judge presiding,  
9 a quorum no longer exists, the administrative law judge who  
10 is presiding must complete the hearing as if sitting alone  
11 and must render a proposed decision in accordance with  
12 subsection (e) of this Section; and

13 (7) perform other necessary and appropriate acts in the  
14 performance of his or her duties.

15 (c) Disqualifications.

16 (1) An administrative law judge of the Office must  
17 voluntarily disqualify himself or herself and withdraw  
18 from any case for bias, prejudice, interest, or any other  
19 cause for which, under the laws of this State, a State  
20 court judge is disqualified from hearing a particular case.  
21 An administrative law judge should perform the duties of  
22 the Office impartially and diligently.

23 (2) Any party may petition for the disqualification of  
24 any administrative law judge by filing an affidavit stating  
25 with particularity the grounds upon which it is claimed  
26 that a fair and impartial hearing cannot be accorded. The  
27 affidavit must be filed before the taking of evidence or,  
28 if evidence has already been taken, promptly upon  
29 discovering facts establishing grounds for  
30 disqualification.

31 (3) The administrative law judge whose  
32 disqualification is requested must determine whether to  
33 grant the petition, stating facts and reasons for the  
34 determination.

35 (4) If an administrative law judge becomes unavailable  
36 as a result of recusal or any other reasons, the Chief

1 Administrative Law Judge must assign another  
2 administrative law judge to preside at the administrative  
3 hearing.

4 (d) Ex parte communications. Except in disposition of  
5 matters that are authorized by law to be disposed of on an ex  
6 parte basis, no administrative law judge of the Office may,  
7 after notice of an administrative hearing in a contested case,  
8 communicate, directly or indirectly, in connection with any  
9 issue of fact, with any person or party, or in connection with  
10 any other issue with any party or his or her representative,  
11 without notice and opportunity for all parties to participate.  
12 An administrative law judge, however, may communicate with  
13 other employees of the Office. No member of the Office may  
14 communicate regarding pending matters to any member of an  
15 agency or of an examining, advisory, or disciplinary board if  
16 the agency or board is hearing the case with the administrative  
17 law judge. An administrative law judge may have the aid and  
18 advice of one or more assistants.

19 (e) Proposed decisions. When a majority of the members of  
20 an agency or of an examining, advisory, or disciplinary board  
21 has not heard a case with the administrative law judge, any  
22 proposed decision prepared by an administrative law judge of  
23 the Office is subject to this subsection (e) and Section 10-45  
24 of this Act.

25 (1) When an administrative law judge hears a case  
26 alone, he or she must prepare a proposed decision in a form  
27 that may be adopted as the decision in the case. The  
28 administrative law judge must submit the proposed decision  
29 to the agency or, in the case of proceedings that an  
30 examining, advisory, or disciplinary board is authorized  
31 by an Act to hear and make a recommended decision, to the  
32 examining, advisory, or disciplinary board.

33 (2) When an administrative law judge hears a case with  
34 an agency head or with an examining, advisory, or  
35 disciplinary board, the administrative law judge must be  
36 present during the consideration of the case and must, if

1 requested by the agency or by the board, prepare a proposed  
2 decision and submit it to the agency or board.

3 (3) In reviewing a proposed decision submitted by an  
4 administrative law judge of the Office, an agency head or  
5 an examining, advisory, or disciplinary board is not bound  
6 by the proposed decision and may adopt all, some, or none  
7 of the proposed decision as its recommended decision. If  
8 the agency head or examining, advisory, or disciplinary  
9 board does not adopt the proposed decision in its entirety,  
10 it must either (i) recommend a decision in the case based  
11 upon the record, including transcript, or (ii) remand the  
12 case to the same administrative law judge to take  
13 additional evidence.

14 (4) If a case has been remanded to an administrative  
15 law judge to take additional evidence or to include more  
16 detailed findings of fact or conclusions of law, the  
17 administrative law judge must prepare a proposed decision  
18 upon the additional evidence and upon the transcript and  
19 other papers that are part of the record of the prior  
20 hearing and must submit the proposed decision to the agency  
21 or to the examining, advisory, or disciplinary board. If  
22 the administrative law judge who heard the case originally  
23 is unavailable to take the additional evidence, by reason  
24 of illness or other disability or because he or she is no  
25 longer employed by the Office, the Chief Administrative Law  
26 Judge must assign a different administrative law judge to  
27 take the additional evidence.

28 (5 ILCS 100/12-40 new)

29 Sec. 12-40. Transition.

30 (a) The Governor must appoint a Chief Administrative Law  
31 Judge to take office on July 1, 2006.

32 (b) No later than July 1, 2006, each agency must provide to  
33 the Chief Administrative Law Judge all relevant information  
34 concerning hearings, number of hearings, personnel used as  
35 hearing officers and support staff, and actual expenditures for

1 contracted hearing officer services, equipment, and travel.

2 (c) All full-time administrative law judges used  
3 principally to preside over administrative hearings conducted  
4 by an agency subject to the provisions of this Act for at least  
5 one year before July 1, 2006 must be administratively  
6 transferred to the Office no later than January 1, 2007.

7 (d) All full-time employees who have principally served as  
8 support staff of those employees transferred under subsection  
9 (c) of this Section must be administratively transferred to the  
10 Office no later than January 1, 2007.

11 (e) All equipment or other tangible property, in possession  
12 of agencies, used or held principally by personnel transferred  
13 under this Section must be transferred to the Office not later  
14 than January 1, 2007, unless the head of the agency and the  
15 Chief Administrative Law Judge determine that the equipment or  
16 property will be more efficiently used by the agency if not  
17 transferred.

18 Section 10. The Personnel Code is amended by changing  
19 Section 4c as follows:

20 (20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

21 Sec. 4c. General exemptions. The following positions in  
22 State service shall be exempt from jurisdictions A, B, and C,  
23 unless the jurisdictions shall be extended as provided in this  
24 Act:

25 (1) All officers elected by the people.

26 (2) All positions under the Lieutenant Governor,  
27 Secretary of State, State Treasurer, State Comptroller,  
28 State Board of Education, Clerk of the Supreme Court, and  
29 Attorney General.

30 (3) Judges, and officers and employees of the courts,  
31 and notaries public.

32 (4) All officers and employees of the Illinois General  
33 Assembly, all employees of legislative commissions, all  
34 officers and employees of the Illinois Legislative

1 Reference Bureau, the Legislative Research Unit, and the  
2 Legislative Printing Unit.

3 (5) All positions in the Illinois National Guard and  
4 Illinois State Guard, paid from federal funds or positions  
5 in the State Military Service filled by enlistment and paid  
6 from State funds.

7 (6) All employees of the Governor at the executive  
8 mansion and on his immediate personal staff.

9 (7) Directors of Departments, the Adjutant General,  
10 the Assistant Adjutant General, the Director of the  
11 Illinois Emergency Management Agency, members of boards  
12 and commissions, and all other positions appointed by the  
13 Governor by and with the consent of the Senate.

14 (8) The presidents, other principal administrative  
15 officers, and teaching, research and extension faculties  
16 of Chicago State University, Eastern Illinois University,  
17 Governors State University, Illinois State University,  
18 Northeastern Illinois University, Northern Illinois  
19 University, Western Illinois University, the Illinois  
20 Community College Board, Southern Illinois University,  
21 Illinois Board of Higher Education, University of  
22 Illinois, State Universities Civil Service System,  
23 University Retirement System of Illinois, and the  
24 administrative officers and scientific and technical staff  
25 of the Illinois State Museum.

26 (9) All other employees except the presidents, other  
27 principal administrative officers, and teaching, research  
28 and extension faculties of the universities under the  
29 jurisdiction of the Board of Regents and the colleges and  
30 universities under the jurisdiction of the Board of  
31 Governors of State Colleges and Universities, Illinois  
32 Community College Board, Southern Illinois University,  
33 Illinois Board of Higher Education, Board of Governors of  
34 State Colleges and Universities, the Board of Regents,  
35 University of Illinois, State Universities Civil Service  
36 System, University Retirement System of Illinois, so long

1 as these are subject to the provisions of the State  
2 Universities Civil Service Act.

3 (10) The State Police so long as they are subject to  
4 the merit provisions of the State Police Act.

5 (11) The scientific staff of the State Scientific  
6 Surveys and the Waste Management and Research Center.

7 (12) The technical and engineering staffs of the  
8 Department of Transportation, the Department of Nuclear  
9 Safety, the Pollution Control Board, and the Illinois  
10 Commerce Commission, and the technical and engineering  
11 staff providing architectural and engineering services in  
12 the Department of Central Management Services.

13 (13) All employees of the Illinois State Toll Highway  
14 Authority.

15 (14) The Secretary of the Illinois Workers'  
16 Compensation Commission.

17 (15) All persons who are appointed or employed by the  
18 Director of Insurance under authority of Section 202 of the  
19 Illinois Insurance Code to assist the Director of Insurance  
20 in discharging his responsibilities relating to the  
21 rehabilitation, liquidation, conservation, and dissolution  
22 of companies that are subject to the jurisdiction of the  
23 Illinois Insurance Code.

24 (16) All employees of the St. Louis Metropolitan Area  
25 Airport Authority.

26 (17) All investment officers employed by the Illinois  
27 State Board of Investment.

28 (18) Employees of the Illinois Young Adult  
29 Conservation Corps program, administered by the Illinois  
30 Department of Natural Resources, authorized grantee under  
31 Title VIII of the Comprehensive Employment and Training Act  
32 of 1973, 29 USC 993.

33 (19) Seasonal employees of the Department of  
34 Agriculture for the operation of the Illinois State Fair  
35 and the DuQuoin State Fair, no one person receiving more  
36 than 29 days of such employment in any calendar year.

1           (20) All "temporary" employees hired under the  
2 Department of Natural Resources' Illinois Conservation  
3 Service, a youth employment program that hires young people  
4 to work in State parks for a period of one year or less.

5           (21) All hearing officers of the Human Rights  
6 Commission.

7           (22) All employees of the Illinois Mathematics and  
8 Science Academy.

9           (23) All employees of the Kankakee River Valley Area  
10 Airport Authority.

11           (24) The commissioners and employees of the Executive  
12 Ethics Commission.

13           (25) The Executive Inspectors General, including  
14 special Executive Inspectors General, and employees of  
15 each Office of an Executive Inspector General.

16           (26) The commissioners and employees of the  
17 Legislative Ethics Commission.

18           (27) The Legislative Inspector General, including  
19 special Legislative Inspectors General, and employees of  
20 the Office of the Legislative Inspector General.

21           (28) The Auditor General's Inspector General and  
22 employees of the Office of the Auditor General's Inspector  
23 General.

24           (29) All employees of the Office of Administrative  
25 Hearings.

26 (Source: P.A. 93-617, eff. 12-9-03; 93-721, eff. 1-1-05;  
27 revised 10-14-04.)

28           Section 99. Effective date. This Act takes effect upon  
29 becoming law.